

Application No. 09/905,255

Atty Docket: BLFR 1007-1

REMARKS

Pending in the present application are claims 1-55.

The Specification

The information contained in the Related Applications paragraph has been updated. Typographical errors noted by the Examiner and others as discovered by Applicants are and will be corrected.

The Abstract

The Abstract has been rewritten to be clear, concise and consistent with the amended claims. Applicants have avoided, "The disclosure concerns...".

Interview

Applicants appreciate the Examiner's courtesy of an interview on 22 June 2004. During the interview, Applicants presented their view that Cessna '420 is an add-on for a planning system (like Math Type for equations in Word) that facilitates dynamic grouping of locations and application of other technologies that are not described or enabled by Cessna. "Store Clustering is the process of grouping (or clustering) stores to facilitate store planning by reducing the volume of locations to plan. As described above, the clustered stores are treated as a single entity for planning Purposes." Col. 11, lines 7-11. Accordingly, Cessna is agnostic to the underlying planning methodology. Even characterized as a "shell", Cessna is an empty shell that does not disclose or enable the claimed inventions.

We clarified that the introductory remarks on page 3, paragraph 2, are intended to be consistent with the "broadest reasonable interpretation in view of the specification" rule recited in the MPEP, *e.g.* §§ 2106 at 2100-8 to 9 and 2100 at 2100-46 to 47 (8th Ed. Rev. 2, 2004).

The Examiner's attention was directed to paragraph [0336] of the application, which gives meaning to the term "notional deliveries". We discussed the option of moving this definition of a term not ordinarily used in the art into a "wherein" clause as part of the dependent claims, to make the definition more accessible during review of the Examiner's action by supervisors. In our view, this can be done

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without narrowing the claims, as claim language is to be construed in view of the specification.

Amendment of claim 1, as presented above, was discussed without reaching any agreement.

Amendment of claim 28, to add "computer-implemented" to the preamble was discussed with a general indication that this would be likely to overcome the § 101 rejection.

The § 112 rejection for indefiniteness was discussed, with reference to MPEP § 2173.05(b), which indicates that relative language does not automatically render a claim indefinite. "Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification." *Id.*

At the conclusion of the interview, Applicants submitted an unofficial, searchable-PDF version of the extensive application in this case, to assist the Examiner in his review.

Claim Rejections under 35 USC 112

The Examiner rejected claims 40-43 under 35 USC 112, second paragraph on the basis that the terms "desired" and "consistent" are relative terms and render the claims indefinite. However, this must be a shorthand for something else that the Examiner has in mind, something unsaid, because use of relative terms does not automatically render a claim indefinite. MPEP § 2173.05(b) Relative Terminology. "The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification." *Id.*

Applicants have amended claims 40-41 to substitute "predetermined" for "desired." However, Applicants have not amended claims 42-43.

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Applicants submit that one of ordinary skill in the art would understand what is claimed in claims 42-43, when read in light of the specification. Therefore, under MPEP § 2173.05(b), these claims are not indefinite.

Claim Rejections under 35 USC 101

The Examiner rejected claims 28-55 under 35 U.S.C. 101 as being directed to non-statutory subject matter. The single independent claim in this group has been amended in the preamble to conform to the other acceptable, "computer-implemented" method claims.

Claim Rejections Under 35 USC 102

The Examiner rejected all claims under 35 U.S.C. 102(e) as being anticipated by Cessna et al (USP 6,510,420, referred to as Cessna).

Cessna presents an add-on to a planning system, without describing or enabling any planning, projecting or bottom-up simulation methodology, much less the claimed methods. Cessna's invention "addresses the above-mentioned [store clustering] problems by providing a system and method for dynamically building hierarchical groupings of business information based on multidimensional member characteristics." Cessna, Summary of Invention, col. 2, lines 19-22. The specialized software programs that handle planning data are referred to by Cessna in column 1, lines 25-32, in a passage that the Examiner did not cite because it does not describe or enable the claimed invention. Applicants respectfully submit that the passages that the Examiner did cite are no better at describing or enabling the claimed inventions than column 1, lines 25-32. Cessna does not describe or enable the claimed inventions because Cessna is an add-on, not a planning, projecting or simulating system. One of skill in the art would consider adding Cessna onto the claimed inventions, not substituting Cessna for what is claimed.

Claim 1: Applicants have amended claim 1 to replace "projecting" with "simulating". Cessna does not describe simulating unit inventory and unit sales on a bottom-up, per location basis for a plurality of items at a plurality of locations. Therefore, claim 1 and the claims that depend from it, including claims 2-27, are allowable over Cessna.

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Claims 2-4: Cessna's *ad hoc* grouping and aggregation of stores so that they can be treated as one item implies rolling up the individual stores into an aggregate. However, there is no methodology for projecting gross margins, taking into account actual costs for current inventory and projected costs for projected deliveries. This is an additional basis for claims 3-4 being allowable over Cessna.

Claims 5-6: Applicants have studied Cessna and looked for notional deliveries, but not found anything like notional deliveries. We do not believe that notional deliveries is a common term in the art; we directed the Examiner during our interview to paragraph [0336] for Applicants' definition of notional deliveries. Without narrowing the properly interpreted claims, we have used the definition in [0336] in a "wherein" clause, which makes it more visible to reviewers who double-check the Examiner's work. The lack of notional deliveries in Cessna is an additional basis for claims 5-6 being allowable over Cessna.

Simulating notional deliveries for merchandise planning support is novel in this assignee's approach, allowing a system user to put short-lead time items on par with long-lead time items, when looking forward to a planning horizon. Planning systems sometimes take into account orders that have been placed with suppliers, in addition to inventory on hand, with the hidden consequence that short-lead time items are treated differently than long-lead time items. The planning horizon may be distant enough, in time, to cover multiple replenishment cycles for short-lead time items. It is not enough to take into account those orders that have been placed with suppliers, due to the brief order cycle for short-lead time items. Notional orders are a way of representing orders that have not been placed with suppliers, to put short- and long-lead time orders on similar footing.

Claims 7-12: These claims further limit application of notional deliveries. The lack of these further limitations on notional deliveries (or notional deliveries, at all) in Cessna is an additional basis for claims 7-12 being allowable over Cessna.

Claims 13-15: Claim 13 is amended to replace projecting with "simulating", consistent with claim 1. Claims 14-15 depend from claim 13. The cited passages, Cessna, c 2, l 51-59; c 5, l 31-40; c 2, l 1-6, present an empty shell that does not describe or enable simulating of unit sales for weekly periods, taking into account causal events or promotions during the simulation period. This is an additional basis

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for claims 13-15 being allowable over Cessna.

Claims 16-27: Claims 17-27 depend from claim 16, which depends from claim 1. Claim 16 is amended to replace projecting with "simulating", consistent with claim 1. The cited passages, Cessna, c 2, l 51-59 present an empty shell that does not describe or enable simulating of unit sales for daily or more frequent periods. This is an additional basis for claims 16-27 being allowable over Cessna.

Claims 17-27 include many simulation factors that are not described or enabled by Cessna. There is no mention in Cessna of factors modelled by simulation such as stockouts, in and out dates for items, last purchase order receipt dates, or causal events (promotions, markdowns or item presentations.) Cessna does not even teach what these retailing events are – does not even mention them. Each of the simulation factors presents an additional basis for claims 17-27 being allowable over Cessna.

Claim 28: Claim 28, as originally presented, defines notional deliveries as, "[I]n addition to projected deliveries for outstanding orders", which is consistent with paragraph [0336] and the amendment of dependent claims 5-6. This is novel, as discussed in the context of claim 1.

Cessna provides an add-on aid for data manipulation, but does not describe or enable the claimed sequence of actions that produce a report of prorated sales or revenue budgets and the projected sales. Referring to the cited passages, at col. 2, lines 51-59, in the Summary of Invention, is described a sequence of steps for dynamic hierarchical grouping of stores to be handled as a single unit. At col. 5, lines 16-39, the Detailed Description identifies a multi-dimensional cube mechanism and lists in three words the potential dimensions of "product, location [and] time". These three words are not enough to describe or enable the claimed invention. Other than these three words, the cited passages are an empty shell.

The notional deliveries in particular, and the claimed sequence of actions in general, present a basis for claim 28 and claims 29-55 that depend from it to be allowed over Cessna.

Claims 29-31: Claims 29-31 include constraints on notional deliveries that are not described or enabled by Cessna. There is no mention in Cessna of notional deliveries or constraints such as prorated inventory budgets or lead time. Cessna

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does not even teach what these retailing constraints are – does not even mention them. Each of the constraints presents an additional basis for claims 29-31 being allowable over Cessna.

Claims 32-37: Claims 32-27, as amended, replace “projecting” with “simulating”. The cited passages, Cessna, c 2, l 51-59; c 5, l 31-40, are an empty shell that does not describe or enable simulating of unit sales for daily or more frequent periods or on a location-by-location basis. This is an additional basis for claims 32-37 being allowable over Cessna.

Claims 38-49: These claims further limit application of notional deliveries. The lack of these further limitations on notional deliveries (or notional deliveries, at all) in Cessna is an additional basis for claims 38-49 being allowable over Cessna.

Claims 50-51: These claims further limit application of prorating. The lack of these further limitations on prorating (or prorating, at all) in Cessna is an additional basis for claims 50-51 being allowable over Cessna.

Claims 52-55: Recapture of projected lost sales due to stockouts is an extremely sophisticated projection, modeling or simulation concept. Cessna comes nowhere near this concept. Accordingly, recapture is an additional basis for claims 52-55 being allowable over Cessna.

Among the references cited but not relied upon, we offer the following observations, based on a cursory review of the references. Shukla, USP 6,456,997 is related to Cessna, with an overlapping disclosure. Shukla describes another tool for *ad hoc* analysis, with an invisible hierarchy, that is another empty shell. Kagami et al., USP 5,974,422 describes a survey tool for fashion designs, which has no inventory-related features. Homma et al., USP 5,179,643 describes applying a classic statistical tool, cluster analysis for *ad hoc* analysis of sales and merchandising information. Hideki, JP 2000-266843, in the copy available to Applicants, is an unreadable, garbled translation of a document that does not appear to qualify as prior art, based on its date of publication.

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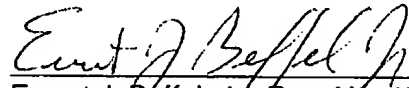
CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these amendments.

Productive as the first interview was, an additional interview is invited. The undersigned can ordinarily be reached at his office at 650-712-0340 from 8:30 to 5:30 PST, M-F and can be reached at his cell phone 415-902-6112 most other times.

Respectfully submitted,

Dated: 22 June 2004


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